UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/RBP/97
23 August 1993

ENGLISH
Original: ENGLISH/SPANISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Twelfth session
Geneva, 18 October 1993
Item 4 of the provisional agenda

ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET

(d) Technical assistance, advisory and training programmes on restrictive business practices

TECHNICAL ASSISTANCE ON RESTRICTIVE BUSINESS PRACTICES

Note by the UNCTAD secretariat

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GE.93-52981 (E)

INTRODUCTION

1. With respect to item 4 (d) on technical assistance, the Intergovernmental Group of Experts on Restrictive Business Practices, at its eleventh session (November 1992) agreed that the secretariat should:

(i) continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition; and

(ii) undertake a review of technical cooperation activities in the field of competition policy by member States and international organizations, so as to enable the Intergovernmental Group of Experts at its twelfth session to make an evaluation of how to improve the effectiveness of UNCTAD's technical assistance activities. 1/

Hence, this note contains a progress report (cf. section I) of technical cooperation activities of the secretariat in the period since the eleventh session of the Intergovernmental Group of Experts; 2/ and extracts of replies of member States to the note of the Secretary-General of UNCTAD dated 13 May 1993 requesting information on technical cooperation activities in the field of competition policies undertaken by member States and international organizations (cf. section II). There follow suggestions by the secretariat to facilitate the task of the Group of Experts in evaluating how to improve the effectiveness of UNCTAD's technical assistance activities (cf. section III).

1/ Report of the Intergovernmental Group of Experts on Restrictive Business Practices (TD/B/39(2)/7), paragraph D of the agreed conclusions.

2/ For a report on the preceding period, see "Activities relating to specific provisions of the Set" (TD/B/RBP/90).

I. PROGRESS REPORT ON UNCTAD TECHNICAL COOPERATION

2. In line with the agreed conclusions of the Intergovernmental Group of Experts on Restrictive Business Practices at its eleventh session (agreed conclusions D (i)), the UNCTAD secretariat has continued to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy.

3. The main thrust of the secretariat's action can be described as follows:

(a) The holding of an introductory seminar aimed at sensitizing Governments and legislators, as well as academics, business and consumer-oriented circles, to the importance of competition policy and the need for appropriate RBP control legislation;

(b) Upon request, once the Government has decided that it needs RBP legislation, providing advisory services with respect to the drafting of national RBP control legislation. (This usually involves assistance by high-level experts from developed or other countries experienced in the field of competition);

(c) Once the RBP control legislation has been adopted, the training of national officials responsible for implementation of the RBP control legislation might be needed. Upon request, training workshops may be envisaged, at home or abroad, with high-level foreign experts; another possibility would be to arrange internships with foreign competition or RBP control authorities, for such periods of time as may be offered by the foreign authorities in question. These actions can also be useful from time to time for developing countries having experience in this area, but wishing to exchange experience with RBP experts of developed countries;

(d) A possible fourth element closely linked to (c) above could include in some countries, if they so request, assistance in "institution building", i.e. in the establishment of the competition/RBP control authority and in the implementation of the law.

4. Over the period October 1992 to July 1993, UNCTAD's action was mainly concentrated on stages (a), (b) and (c).

1. Seminar on the Enforcement of National Laws on Competition and Restrictive Business Practices - New Delhi, India

5. As part of Germany's commitment to the Set of Principles and Rules on Restrictive Business Practices, the German Foundation for Development (DSE) financed and organized, in cooperation with the Monopolies and Restrictive Trade Practices (MRTP) Commission of India, the Federal Cartel Office (FCO) of Germany and UNCTAD, a Seminar in New Delhi, from 1 to 5 February 1993. This Seminar, which was attended by some 35 high-level officials, provided interesting exchanges of views and experiences on the control of restrictive business practices, in the light of the economic reforms under way in India.

2. Subregional Seminar on Restrictive Business Practices and Competition Policy - Guatemala City, Guatemala

6. This Seminar took place on 18-19 March 1993 at the headquarters of the Central American Economic System (SIECA), and brought together participants from El Salvador, Guatemala and Honduras. Experts from Norway and Sweden participated in the Seminar, which was financed in part by the voluntary contributions from Norway to UNCTAD's Restrictive Business Practices Trust Fund. At its final session, the Seminar adopted a list of conclusions and recommendations to the participants' respective Governments, in which they draw attention to the importance of adopting national competition legislation, especially in countries undertaking market-oriented economic reforms.

3. Subregional Seminar on Competition and Restrictive Business Practices - Panama City, Panama

7. This Seminar, organized in cooperation with the Instituto Panameño de Comercio Exterior, brought together participants from Costa Rica, Nicaragua and Panama. The Seminar took place on 22-23 March 1993, back-to-back with the Guatemala Seminar, in order to minimize travel costs. The same RBP Experts from Norway and Sweden provided support for the Seminar, which was partly financed by Norway.

8. During the concluding session, the seminar adopted a list of recommendations, in which the following specific requests were made:

(a) The Seminar recommended that studies be prepared on market structures in Central American countries, with a view to analysing RBPs in selected sectors;

(b) The Seminar also recommended that case studies be made of Latin American countries which have experience in RBP legislation (such as Chile, Argentina and Brazil);

(c) It was also proposed that, on the basis of such studies, a further seminar be held for an exchange of experiences among Central American countries, attended by experts from other Latin American countries, with a view to helping all countries of the region to adopt appropriate competition legislation.

9. In this connection, the participants from Costa Rica informed the Seminar that they had prepared a competition law which was currently before Congress.

10. Subsequently, the Government of Nicaragua formally requested technical assistance from UNCTAD in the area of competition.

4. Regional Seminar on Competition and Restrictive Business Practices for CARICOM member countries - Bridgetown, Barbados

11. This Seminar was organized with the cooperation of the CARICOM Export Development Project (CEDP), and was attended by over 20 participants from CARICOM member countries in addition to representatives from the University of West Indies, as well as from the CARICOM secretariat. The Seminar took place

on 22-23 March 1993, also back-to-back with the Guatemala and Panama Seminars, for reasons of economy. The Norwegian and Swedish experts, as well as a Canadian expert, participated in this Seminar. One of the presentations, on the subject of competition policy and economic reform, was made by the Director of the Jamaican Institute of Business, who also presented the new Competition Law of Jamaica (the Jamaican Law is included in this year's Handbook on RBP legislation, in TD/B/RBP/94).

12. At the closing session, a round-table was organized, at which the following recommendations were adopted:

"In work towards the Single Market and Economy, the (CARICOM) Region should:

1. Recognize and take account of the international norms which have been established (including the Set of Principles and Rules as set down in TD/RBP/CONF/10/Rev.1);

2. Take note of the Jamaican Fair Competition Act, 1992;

3. Note that the cost of administration/regulation may be justified by the "benefits" which can be derived;

4. Note that in the current international environment there may be a cost to non-implementation of Restrictive Business Practices (RBP) legislation in the Region;

5. Note the provisions of Articles 30 of the Common Market Annex;

6. Enter into consultation (following the requisite education) with the public and private sectors (including consumers' organizations and the consumers themselves) on appropriate provisions on competition policy;

7. Seek Ministerial endorsement of a regional policy approach;

8. Seek agreement on provisions in the treaty to ensure common policy and commission draft model legislation to provide for uniform application; and

9. Seek Ministerial approval of treaty provisions and draft model legislation."

13. Requests for further technical assistance, advisory services and in particular training services were made, inter alia, by Jamaica and St. Lucia; it was suggested that training workshops and courses could be organized in cooperation with UNCTAD's TRAINFORTRADE Programme.

5. Seminar on Competition Policy and Restrictive Business Practices - Cairo, Egypt

14. This Seminar took place on 28-30 June 1993, under the auspices of the Ministry of Economy and Foreign Trade of Egypt, UNCTAD and UNDP. An expert from the Federal Cartel Office (FCO) of Germany also participated in the Seminar, which was attended by high-level Government officials, as well as representatives of academic circles and the business community. This Seminar was aimed at sensitizing Government, business and academic circles to the need for competition policy in tandem with the economic reforms under way in Egypt.

6. Ghana national project

15. Under the Ghana/UNDP "Umbrella Project for Strengthening Development Planning" (GHA 85/010), advisory services were provided in 1992 by British and German experts and UNCTAD staff, and a Competition Bill was prepared. At the time of writing, UNCTAD was waiting for the adoption of the law before embarking on stage three of the project, namely training of the members of the RBP Control Authority.

II. INFORMATION ON TECHNICAL COOPERATION ACTIVITIES IN THE FIELD OF COMPETITION POLICY BY MEMBER STATES AND INTERNATIONAL ORGANIZATIONS

16. This section offers a summary of the replies received so far to the Secretary-General's note of 13 May 1993. In order to enable the Intergovernmental Group to guide the secretariat's priorities in this area, States members, and organizations which wish to do so, may present additional information in writing before or during the twelfth session of the Group.

GERMANY

17. The German Government stated that:

(1) In cooperation with the UNCTAD secretariat, the German Government continued its series of competition law seminars for senior officers of national competition authorities with a seminar for Argentina. Early in 1993, another seminar was held in New Delhi for members of the Indian Trade Practices Commission.

(2) As further measures in the area of German technical assistance, in particular for developing countries, the Federal Ministry of Economics and the FCO hosted delegations from Cuba, China, Thailand and Zimbabwe, which sought information and advice on competition matters. FCO staff members also gave advice locally in Benin and Mexico, among other countries.

(3) The FCO also continued its exchange programme for officials as well as its training programmes for senior officers from other national competition authorities in the period under review.

(4) Furthermore, the FCO held its sixth International Cartel Conference, with competition experts from 28 nations, among them

representatives from the Republic of Korea and the Philippines. The theme of the Conference was "Strategic alliances - a new challenge to competition policy".

(5) In the period under review, the FCO also started to inform OECD non-member countries on pending FCO proceedings affecting the interests of the nations concerned. However, such voluntary information on specific cases will probably be limited to a few countries, for as a rule it will at most be possible for the FCO to judge whether a pending proceeding has effects on some of Germany's immediate East European neighbours.

(6) In order to encourage the dissemination of information on restrictive business practices adversely affecting international trade, the FCO will continue to send English language copies of the FCO's press releases to the UNCTAD secretariat voluntarily.

(7) All these measures reflect the Federal Republic's growing efforts to honour the important international commitments contained in sections F.2 and G.6 of the Set.

(8) For further information, the FCO's activity report covering the years 1991 and 1992 (available only in German), due to be published at the end of June 1993, as well as the English summary of the latest Biennial Report of the German Monopolies Commission, will be sent to the UNCTAD secretariat in due course.

NORWAY

18. The Norwegian Government stated that:

(1) From 18 March to 26 March 1993 a total of three seminars were arranged by UNCTAD. The seminars, which lasted for two days took place in Guatemala, Panama and Barbados. These seminars were partly financed by Norway, and the Price Directorate sent one lecturer. This was the fifth time Norway had sent lecturers and contributed to the financing of advisory and training programmes for developing countries.

(2) In September 1992 the General Director of the Price Directorate took an active part as an expert in a seminar held by UNCTAD in China.

SPAIN

19. The Spanish Government stated that:

In Spain since November 1992, the most significant developments with respect to technical cooperation have been:

A visit by two Mexican officials who, throughout the month of May, were shown in detail each of the activities of both the Competition Authority and the Tribunal de Defensa de la Competencia (Competition Defence Tribunal). This visit served as a complement to the cooperation already accorded in connection with the elaboration of their Competition Law.

A visit by Mr. James Langenfeld, Director for Antitrust of the Federal Trade Commission (FTC) of the Federal Government of the United States, on 22 and 23 February. Throughout his visit, Mr. Langenfeld provided valuable information on:

- General and organizational aspects of the defence of competition in the United States;

- FTC activities with respect to uncompetitive conduct;

- FTC intervention to control mergers;

- Other specific subjects.

SWEDEN

20. The Swedish Government stated that:

(a) Summary of technical cooperation activities

1. Bilateral activities:

(1) In the spring of 1992 Sweden received a study delegation from the ministries of economics and the competition authorities of Estonia and Lithuania. In connection to this visit two of their representatives were invited for a six-week traineeship. In addition to general information of competition rules and organization of the competition authorities in Sweden, the trainees also had the opportunity to study the daily work in different departments, where they were introduced to their special activities.

(2) During spring 1993 the Swedish Competition Authority received study visits from Slovenia and Poland. On both occasions the information and the discussions focused on competition legislation and enforcement of competition policy as well as on public regulations and deregulatory measures related to the introduction of market economy.

2. Multilateral activities:

(3) One expert from Sweden participated as lecturer in UNCTAD's regional seminars in Guatemala, Panama and Barbados for Central American States and Caribbean States in March 1993. Experts from Norway and Canada also took part in the seminars. The seminars dealt with competition policy on a general basis, e.g. with basic features of restrictive business practices, competition policy and economic reforms and the motives and need for restrictive business practices control legislation. They also dealt with experiences from developed and developing countries in the area of competition policy including enforcement of legislation.

(4) In June 1993 an expert from the Swedish Competition Authority, together with experts from Finland and from the EFTA secretariat, took part in a project of technical assistance to Bulgaria and Romania organized by the EFTA countries. The assistance included seminars and workshops on competition policy, its organization and enforcement in practice as well as on the

national legislations in the competition field in the respective countries. Regulatory measures for countries in transition were also topics put forward by the recipients. The project also includes study visits during approximately one week to Sweden and Finland in order to follow up and to provide more detailed information. The visits of delegations from Bulgaria and Romania are envisaged to take place during the autumn 1993.

(b) Commentary on preferred types of technical cooperation

(5) Multilateral seminars of a general character, comprising as well donors as recipients from different countries, may be valuable but priority should, in our view, be given to other types of technical cooperation in the first place. Multilateral seminars of a general character, e.g. regional seminars, may, however, be efficient in order to cover several countries within limited resources when the aim is to provide general and basic information to developing countries which are "beginners" in the competition field. Secondly, regional seminars of a general character may prove to be valuable when the recipients have reached a certain, and rather homogeneous, level of development in the competition field. Regional seminars can then be a forum for contacts and for exchange of information and experiences, not only with the experts representing the donors but also with countries from the same region and in the same stage of development.

(6) However, in most cases, a combination of several types of technical assistance that takes into account the specific interest of the recipients, are generally to be preferred. In our view, the benefits from multilateral seminars of a general character are mostly limited unless they are accompanied by other types of assistance such as workshops on specific issues which are relevant to the recipients. In those cases they will have to be carefully planned through close contacts with the receiving countries in order to ensure that both the issues and the participants are selected accordingly.

(7) Consequently, regarding multilateral seminars the conclusions from our experience as a donor country are mainly three: to be an efficient instrument they should (a) be combined with other types of technical cooperation that complement each other, (b) concentrate on broad information of a general character to one country at a time or (c) concentrate on some issues of special relevance to recipients with similar requirements.

(8) Bilateral technical cooperation is generally to be preferred in our view, as it can be adjusted more adequately to the level of knowledge and standard of the receiving country who can also influence more directly on the aid-scheme. Technical assistance is often required concerning drafting of legislation. This is an example of assistance that may be most efficiently given if directed towards an individual country. Exchange of officials that will be able to follow the daily work at the competition authority and to discuss issues of direct relevance is another example of a type of bilateral assistance that has proved to be of great value but also to be very resource-consuming for the donor country.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

21. The United Kingdom Government stated that:

(a) Technical assistance

(1) The Office of Fair Trading (OFT) took part in a number of bilateral meetings with other competition authorities and interested parties from abroad. Visits to the United Kingdom were made by representatives of the competition authorities of Australia, Bulgaria, Canada, Cyprus, Czechoslovakia, Egypt, Finland, France, Germany, Ghana, Israel, Italy, Japan, Poland, the Slovak Republic, Sweden, the Ukraine and Venezuela. The OFT also received visits from representatives of universities and research institutes in Canada, France, Italy, Japan, Malaysia, Russia and Taiwan Province of China and from representatives of various government departments and other political organizations in Australia, Colombia, Russia, South Africa and also the OECD and UNCTAD.

(2) In addition to these short visits, a number of longer secondments to the OFT were arranged. As part of the United Kingdom's ongoing policy of assistance to the former Soviet States, an official from the Russian Anti-Monopoly Committee was seconded to the OFT for seven weeks. A Chinese student from the Centre for Modern Chinese Studies at Oxford University and an official from the newly-established Jamaican Fair Trade Commission were also seconded to the OFT for one week each.

(3) Representatives from the OFT visited Lithuania as part of an OECD mission to advise on the draft Lithuanian competition law, Austria in order to participate in an OECD seminar on cartels and market dominance, and also former Czechoslovakia for a conference concerning Eastern European anti-trust laws. An official from the OFT participated in a Competition Workshop organized by UNCTAD in China and discussed competition issues with government officials in Hong Kong. One official was seconded to the European Commission for one week and another was seconded to the Bundeskartellamt in Germany for two weeks.

(b) Views on preferred types of cooperation

(4) The OFT has undertaken a variety of forms of technical assistance, principally on a bilateral basis, but also multilateral activities under the auspices of the OECD and UNCTAD. As far as the OFT is aware, its efforts in this respect are well received, and the demand for assistance appears to be increasing. It is continuing to develop its technical assistance programme, within available resources. The format will vary and the OFT takes the view that there is scope for different types of technical assistance according to the particular circumstances.

UNITED STATES OF AMERICA

22. The Government of the United States stated that:

In 1992 United States Government competition officials visited many developing countries and Central and Eastern European countries in order to

respond to requests for technical assistance on competition issues; these countries included Bulgaria, the former Czechoslovakia, Estonia, Hungary, Indonesia, Latvia, Lithuania, Poland, Romania, the Russian Federation, and Venezuela, among others. Similarly, during 1992, Department of Justice and Federal Trade Commission officials met in Washington with competition officials from dozens of countries, and provided training courses in Washington to competition officials from several countries, including developing countries and Central and Eastern European countries.

III. IMPROVING THE EFFECTIVENESS OF UNCTAD's TECHNICAL ASSISTANCE ACTIVITIES

23. Over the past year, as indicated above, UNCTAD's technical assistance activities in the area of competition policy have focused mainly on holding national or subregional seminars to sensitize countries to the need to adopt policies and legislation in this area or, where applicable, to assist countries in reflecting upon existing policies in the light of economic reform trends. Attention has also been paid to advising countries on drafting legislation. On the basis of sections I and II, as requested by the Intergovernmental Group of Experts at its eleventh session, suggestions are made below on how to achieve such improvements.

24. The interest expressed by Governments in the subject of competition policy and in adopting competition laws in itself indicates that UNCTAD's technical assistance activities in this area have been effective. It would therefore be appropriate to strengthen those activities. This reinforcement would require both additional resources and further efforts to improve the impact of UNCTAD's technical activities. Their effectiveness has been greatly enhanced by the cooperation provided, in the form of finance and/or provision of experts, by some countries with experience in this area, and a further strengthening of the cooperation provided by such countries would be welcome.

25. With the aim of achieving the maximum effect, the secretariat has organized national seminars, or subregional seminars for a limited number of countries; these types of seminars are, in the secretariat's opinion, normally more effective than big regional meetings, which also cost considerably more. However, as noted by the Swedish Government (see para. 20 above), multilateral seminars of a general character (e.g. regional seminars) may be efficient when the aim is to provide general and basic information to several developing countries which are "beginners" in the competition field, or to provide a forum for contacts and exchange of information and experiences among experts from countries within the same region and at the same stage of development. In other circumstances, technical assistance focused on individual countries would be more effective, as it can be tailored to the needs and requirements of individual countries and would reach the maximum number of participants and competent policy-makers in these countries.

26. But flexibility is necessary in choosing among (or combining) different modes of technical assistance to take into account the needs of countries at different stages, as well as resource costs (it is the practice of the secretariat, in order to minimize resource costs, to cover several countries in one mission). Where appropriate, the RBP Unit's technical assistance in

the area of competition policy might be undertaken in conjunction with technical assistance in other related areas, in collaboration with other sections in the UNCTAD secretariat.

27. The efficiency of UNCTAD's technical cooperation activities might be further enhanced, as mentioned in the progress report to the eleventh session in 1992 (TD/B/RBP/90), by coordinating assistance with bilateral and other multilateral sources of assistance, so that UNCTAD's efforts do not duplicate other efforts. To this end, taking into account the information on activities given in section II, it is suggested that States members of UNCTAD and intergovernmental organizations continue to provide the UNCTAD secretariat, on a regular basis, with information on their technical cooperation activities in this area, as well as cooperation planned for the future, together with appropriate details on the subject-matter of seminars and assessments of the results of technical cooperation activities. The UNCTAD secretariat would take such information into account in designing and implementing its own technical cooperation activities.